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**COMMISSION MEETING  
THURSDAY, JANUARY 10, 2002  
DRAFT MINUTES**

**Chair Orr** called the meeting to order at 1:40 p.m., at the DoubleTree Guest Suites & Inn located in Seattle. He welcomed the attendees.

**MEMBERS PRESENT:**

**COMMISSIONER GEORGE ORR, CHAIR;  
COMMISSIONER, CURT LUDWIG, VICE CHAIR;  
COMMISSIONER LIZ McLAUGHLIN;  
COMMISSIONER ALAN PARKER;  
SENATOR SHIRLEY WINSLEY;  
REPRESENTATIVE ALEX WOOD;  
REPRESENTATIVE JIM CLEMENTS**

**OTHERS PRESENT:**

**RICK DAY, Director;  
ED FLEISHER, Deputy Director, Policy & Government Affairs;  
ROBERT BERG, Deputy Director, Operations;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
AMY PATJENS, Manager, Communications & Legal Dept.;  
JERRY ACKERMAN, Assistant Attorney General; and  
SHIRLEY CORBETT, Executive Assistant**

**1. DIRECTOR'S REPORT and REVIEW OF AGENDA:**

**Rick Day**, Director, reviewed Thursday's agenda and noted that he would be highlighting the supplemental budget issues and the legislative proposals the Commission would be considering. He reported a letter had been received from the Recreational Gaming Association (RGA) regarding their concern about some of the language contained in tribal compacts. Director Day also noted that two e-mails had been received expressing opposition to the Muckleshoot Compact. Referring to Friday's agenda, he pointed out that the last rule scheduled related the RGA's petition. Director Day reported the RGA submitted a request asking the Commission to defer further public discussion, and that the Commission may wish to request clarification on how to proceed.

Director Day updated the Commission on the following issues:

- A) "Dice Slider" Incident and Arrest. State Gambling Commission agents, Muckleshoot agents, TGA, Yakima, and the Port of Seattle Police Department combined forces in an investigation and were successful in arresting three individuals involved in a "dice sliding" cheating scam. This interagency cooperation demonstrates the importance of the Commission's links with local and state law enforcement in the state of Washington -- and their continued efforts to make sure we eliminate any form of criminal influence in gambling activities in the state. The individuals apprehended face first-degree theft charges in Washington. They also had outstanding warrants in Louisiana. They posted a \$25,000 bond and are scheduled for court appearances in Washington in the middle of January. Director Day congratulated the investigative units for their outstanding work.

- B) Supplemental Budget. **Director Day** referred to a balance sheet from the Supplemental Budget Proposals prepared by the Office of Financial Management (OFM). He noted that legislation is being proposed that involves a tax of 10 percent on card rooms, pull-tabs and punch boards. The balance sheet identifies the estimated revenue from that tax. The balance sheet also reflects \$2 million, which has been targeted for transfer from the Gambling Account to the General Fund. Director Day reminded the Commission the original fund transfer proposal was \$4 million, and a memorandum was developed describing the Commission's objections about such a transfer and detailing the reasons: the independence of the Commission, the reason fees are collected, and the impact on the agency's ability to continue its enforcement regulatory mission. OFM was encouraged not to pursue the transfer, and while they did not pursue the \$4 million transfer, a \$2 million transfer has been affirmed. A chart was developed that reflects the revenue transfer and what would happen to the agency's account balances. Director Day noted the \$2 million transfer would essentially move the agency into deficit spending. He emphasized that unless steps are taken to reduce present expenditures, the agency would go in the hole in approximately 2005. If the \$4 million transfer would have been upheld, the agency would be in the red this fiscal year. Either way, the transfer is a substantial impact to the gambling account and depending on priority choices, may very well affect the agency's ability to regulate activities.

**Chair Orr** stressed that he did not like this idea, and that it appeared the Commission was in a lose-lose situation. He appreciated Director Day sharing the Commission's concern with OFM. He emphasized that he didn't think the transfer was a proper way to disburse the agency's funds. **Commissioner McLaughlin** recommended sending a letter to the Governor explaining the Commission's position that the transfer is not appropriate. Commissioner Orr affirmed. Commissioner McLaughlin explained that when she voted to adopt the agency's budget, she voted knowing that there wasn't extra money, and that license fees were calculated on what it costs the agency to operate. **Director Day** affirmed there is a cash balance. He believed that as soon as the Legislature makes a decision, the agency would have to take some action to make sure we don't go into the red. However, with a \$2 million transfer, the agency has some time to take that action, versus the \$4 million transfer, which would have a dramatic and immediate impact.

**Commissioner Parker** thought there was a question of whether the Commission has legal authority to comply with this proposal because the law established the Commission as an independent regulatory commission authorized to collect revenue from the licensees in order to operate the Commission. It didn't say to collect revenue in order to add to the treasury of the state. He believed that if the Commission collects revenue and gives it to the state for its other purposes, the Commission would be in violation of the law that established the Commission. He affirmed there has been some discussion with the Attorney General's Office and it has been noted that the Legislature can amend the law. While that is true, Commissioner Parker believed the Legislature could amend the law if it were part of some budget deficit package. However, he felt it would not be legal for the Commissioners to go along with handing the money over until the law was amended. If the law was amended, then the Legislature would also be telling the Commission that the fees the Commission charges licensees must be raised because they are only collecting as much fee income as is necessary to operate the Commission. He thought this clearly becomes an indirect tax increase upon the licensees. Commissioner Parker also addressed precedent. If this transfer was attempted before, and people saw the legal implications and decided that they shouldn't do it, then that seemed to be a controlling precedent. He emphasized there are a lot of reasons why the Commission can't agree to this, with all due respect to what the Governor and his budget balancers are trying to do. **Chair Orr** echoed Commissioner Parker's comments. He recalled the Commission had quite a debate with nonprofits during the last license fee process and chose not to raise their rates because of the monetary impact to them. He concurred the Commission might not have the legal right to turn over this money. If, however, the law is passed that requires turning over the money, he felt the law should also specifically address how the Commission should deal with I-747 and I-601 impositions.

**Representative Clements** affirmed the Commissioner's comments are very appropriate and he expressed his concern. He articulated that the Governor and his staff should present the legislation if that's their desire. However, he believed the Commission is correct. He noted he has been on the Appropriations Committee for many years and there are tough decisions to be made. The not-for-profits and other people have suffered horrendously in this state. He noted that he has been impressed with the Commission's actions and he advised the Commission to put their comments in writing to the Governor.

Commissioner Parker made a motion seconded by Commissioner McLaughlin that the Director and staff be directed to prepare a draft letter for consideration on Friday, when the Commissioners will have an opportunity to take a final action on authorizing such a letter. *Vote taken; motion passed unanimously.*

**Director Day** reported the agency has two legislative proposals at this time. Director Day referred to the first item, noting it was a technical or housekeeping bill. He reported the Commission and the Liquor Control Board had composed a brief factual explanation of the proposed legislation. He explained that in an audit, the FBI identified that the statutes needed to be clarified in order to provide for the agency's ability to do national criminal history record checks in the use of fingerprints. If the agency failed to do that, we would lose our ability and would be required to abandon that resource. Director Day didn't believe that was a credible option given the tasks the agency undertakes in identifying potential criminal elements in the gambling industry. The Liquor Control Board is in a similar situation. The language adds detail to existing law that identifies the agency's ability to conduct the checks and use fingerprints. The rest of the bill relates to the Liquor Control Board and while their language is a little different, the FBI has approved both versions, one for gambling and one for liquor control. The two agencies discussed this and decided it would be best to go forward in that fashion.

**Director Day** noted the second piece of legislation relates to cheating, and he affirmed the next step would be a Senate Floor vote. At this point, the agency is prepared to move forward with the legislation. He emphasized that it is important to prosecute cheaters appropriately. The bill allows a more effective prosecution and filing of the cases. He explained that in order to identify a particular cheating scam, it's oftentimes hard to get to a felony calculation of the dollar amount involved if we're using a theft statute. If instead, we focus on a conspiracy angle, the elements include proving two people have forwarded a criminal enterprise or criminal act, and therefore, it may be easier to get a prosecution at a felony level.

**Commissioner Ludwig** asked why everything had to be prosecuted as a felony rather than a gross misdemeanor? In the case of the recent dice sliders, he affirmed they should be prosecuted as felons because it was a substantial operation. However, if there would have only been one person, we wouldn't be able to prosecute him as a felon. Commissioner Ludwig acknowledged there are problems either way, and part of the problem is the prosecuting attorney's reluctance to charge people with gross misdemeanors. He noted it is easier to prosecute a gross misdemeanor; it's faster, and in Superior Court, and it would have a lower sentencing range than in District Court. **Director Day** agreed this legislation is not new; the Commission essentially reintroduced it and it has been filed in a slightly different form. **Ms. Patjens** verified the language is identical to last year's bill. It was two years ago when the bill actually had three different degrees of cheating; two of those were felonies, and one was for gross misdemeanors. Last year it passed the Senate, and since bills are typically alive for two years, this bill will automatically go to the Senate Floor unless the Commission chooses to say no. Commissioner Ludwig said this is still a good bill because it will enable prosecutors to go after cheaters.

**Chair Orr** suggested that if the Commission opposes either proposed bill, they need to do so formally, otherwise, staff should proceed forward. There were no objections.

**Director Day** brought the Commissioners up to date regarding the 10 percent tax proposal. As far as staff knows, this is still in a working draft format, there is work going on, however, there is no final version to bring before the Commission for their discussion. He noted several news articles were included in the agenda packet relating to the supplemental budget, the new 10 percent state excise tax on gambling, a freeze on card room licenses, and a betting limit increase to \$300. The news articles were included so the Commissioner could have a broader sense of the pros, cons and discussions around the proposed legislation.

**Representative Clements** noted that last year, when the state was struggling for money, he was asked to support "Power Ball" to help the Education Committee. At the time, they casually mentioned that some of the Governor's people noted that Washington was the only state that didn't have a gambling tax. He anticipated a lot of dialogue on this issue and as they look for money in this state. Representative Clements affirmed there are a lot of priorities to meet, and he cautioned that the gambling tax, or the Power Ball, or Big Game might succeed because the Governor is looking for alternative revenue sources. He noted that with a \$1.5 billion hit, one either has to have a revenue source or cut services, it's that simple.

**Chair Orr** advised the audience that he would open the meeting for public comment after Director Day had completed his presentation.

- C) Adjusted Cash Flow. **Director Day** said it was important that the Commission see the second and third quarters adjusted cash flow numbers. He noted the yellow indicates a Bingo operation that is lower and does not meet the adjusted cash flow requirement, and the green depicts a Bingo operation that is in the negative. When there are two negative quarters, it results in a summary suspension from the director. The fourth quarter figures for 2001 will be presented at the March meeting. Director Day noted if there are other suspensions, they may occur in mid to late February. Director Day said staff would continue to do their best to make sure they are convinced the nonprofits that might be in that position receive clear communication in advance of a suspension. Currently, the Commission has issued three summary suspensions, all three have requested a stay, and all three have been denied at this point. Hearings have been scheduled.
- D) Legislative Round Table Meetings. **Director Day** did not review the various state reports contained in the agenda packet because the Commission had already seen the comparisons of neighboring states to Washington. A summary of the information presented to the Legislative Round Table regarding tribal compacts was included in the packet for informational purposes.
- E) Update Reports. **Director Day** noted this section contains the latest status of administrative and congressional cases, as well as information updating the Commissioners on the status of Compact negotiations.
- F) Correspondence. Director Day directed the Commissioners attention to miscellaneous articles of interest including articles pertaining to the current budget issue, articles concerning the reduction of the local gambling tax in a couple of jurisdictions, and to a homicide in the Toppenish relating to a cockfight.

**Chair Orr** opened the meeting for public comment.

**Steve Griffiths**, President, Recreational Gaming Association, said that once the RGA heard about the taxation on the card rooms and pull-tabs, they conducted an analysis. They took the Gambling Commission's last four quarterly reports and added the 10 percent tax. They took third party information and applied the tax. One of the most startling results was that the tax did not reach the \$74 million goal that was anticipated. In fact, it only reached \$36 million with no businesses closing. When they applied the tax to card rooms, they found an approximate 46 percent failure rate in the card room industry. Given that type of failure rate, there will be 3,500 to 5,000 jobs being affected and about \$5.5 million dollars in local taxes being offset, as well as an additional \$4.7 million in projected excise tax that will not be realized. The RGA also looked at the Pull-tab Industry. They took one of the quarterly reports and plugged the tax into one column and looked at the net results. It showed nothing but negatives in the net win column or the profit column. That column extends down approximately 18 pages for about 400 to 600 operators. Mr. Griffiths emphasized the RGA had grave concerns about this proposal. **Commissioner McLaughlin** inquired whether they included the rent, leases or other expenses.

**Ms. Patjens** responded that there is some misunderstanding as to what types of expenses can be taken out of their activity reports when operators submit them to the agency. Staff will be looking at changing their instructions. Ms. Patjens affirmed that these do not take into account all of the costs of the restaurant because staff are interested in the gambling aspect. It could be that the restaurant is doing very well. It may actually be understating the total income for the business, or maybe overstating it. The same can be true for the charities. Staff looks at the gambling part of the business, and doesn't look at all of the expenses that are related to running a nonprofit organization. Ms. Patjens believed there has been some misinterpretation as to what could be deducted, however, staff utilizes generally accepted accounting principles. **Commissioner McLaughlin** suggested that perhaps OFM is assuming this is net profit for the card room or the pull-tab operator.

**Mr. Griffiths** responded that the reports do not contain a number of financial elements that are common to businesses. One of the elements they put into their (card room) report is the corporate tax. One actually pays that tax every quarter. The RGA also looked at issues like what's not included (principal payments). They couldn't factor the principal payment into the analysis because they would have to go to each operator and get that figure. The 46 percent failure rate is simply plugging in the Governor's proposed tax and the income tax payable as a corporation, without the principal

payment. When debt service, or that principal portion of debt service is added, the failure rate is anticipated to climb to 50 to 60 percent of the industry. The unemployment issue associated with that would climb to six or seven thousand people --people who would be unemployed in a market that's diminishing. **Mr. Griffiths** indicated that people are cutting back and they're trying to get their margin up. However, even the clubs that survive would not be hiring, and those people have nowhere to go because there isn't anywhere to reabsorb them into the market.

**Commissioner McLaughlin** asked if the RGA figured in the possibility of having the higher \$300 betting limits? **Mr. Griffiths** affirmed and added that it had a marginal effect. They did a number of analyses that plugged in five and ten percent, but it did not offset the tax. He believed it took the figure from \$36 million to \$38 or \$39 million even under the most optimistic scenario by factoring in the bet increase. He noted there are a lot of operators who are saying they won't even put it in because they don't see the point to it. They don't have players that play in that range. **Commissioner Ludwig** asked where Mr. Griffiths' card room was located. Mr. Griffiths responded P.J. Pockets in Federal Way, and advised he was at a 20 percent tax rate. Commissioner Ludwig asked if the cities are beginning to realize that that's going to be the thing that will ruin the industry. Mr. Griffiths acknowledged that people were beginning to realize that you can't assess a huge tax to these card rooms, they won't sustain it — and most people are looking at that and actually diminishing taxes to enable the card rooms to survive. Commissioner Ludwig asked if the association had discussed the likelihood that if the Governor/Legislature decided to impose a state tax on any form of gambling, that there would be some quid pro quo. Mr. Griffiths hoped there would be some way of offsetting the tax and affirmed they would certainly like to explore the increased betting limit opportunities.

**Commissioner Ludwig** asked why people are still getting into the card room business? **Mr. Griffiths** said he believed there's a misperception—some of the early operators made a tremendous amount of money and some people had dollar signs in their eyes. They didn't look at the realities of the marketplace and the cost associated with running these operations. The industry is not in very good shape and yet there are still people who think they can make a lot of money. He said he certainly wouldn't encourage anyone to get into the market at this point. Commissioner Ludwig believed the industry needed to assess what's killing the industry and what's hurting the market. Mr. Griffiths believed there are too many casinos or card rooms in the industry, and the encouragement of more of them will cause more to fail. Certainly this tax may be the thing that pushes a lot of people over the edge. **Chair Orr** noted that sooner or later, the market will become saturated and it certainly wasn't government's job to determine the marketplace.

**Commissioner Parker** asked if the RGA had considered the idea that this is an income tax. He noted the history in this state that an income tax is a poison pill politically, and that no politician dares to publicly propose an income tax. If things have changed politically and now it's politically acceptable to change the basic tax structure in this state from a sales tax (a regressive form of taxation), to an income tax, then why not level the playing field and have an income tax throughout the state? He asked if the RGA had considered that as a response? **Mr. Griffiths** thought that may be a policy issue. The RGA had not considered that response. He commented that based on Commissioner Parker's assertion that this is an income tax, he presumed that there is some income to be taxed -- therefore this tax is an egregious form of tax because it taxes the gross -- just like the local jurisdictions taxes gross revenue right off the top before any expenses are paid. Mr. Griffiths said he had not looked at the policy ramifications of an income tax, but he was sure the policy makers would mull that over. **Representative Wood** commented that a state income tax is prohibited by the State Constitution and in order to impose one, a constitutional amendment would be required. That would start with a two thirds vote of support from both houses, which he didn't think was likely.

**Steve Strand**, President, Washington Charitable and Civic Gaming Association, expressed the organization's support for the Commission's position on the reclamation of funds to the state's General Fund. He encouraged the Commissioners to stop that from happening and he offered the Association's help. In reference to the tax, he noted there are a lot of unclear items: whether or not the charitable nonprofits are included, whether or not the tax is written for gross net versus gross sales, and whether it was calculated on gross sales. Mr. Strand felt there was a lot of ambiguity about where the numbers came from and who is included. Even if the charitables were in a fortunate position not to be included, which they would encourage, the Association wanted to express their concerns and worries about an additional level of taxation that could easily snuff an important source of revenues for the nonprofits funding in the state of Washington.

**George Teeney**, an owner of card rooms located in LaCenter, reported that when he received this information, he took it so seriously the RGA invested 800 to 900 man-hours in putting together a response for OFM and the Governor to help them understand this would be a mistake, and to give them some realistic insights. He noted that for the last 12 or 13

years he has tried to work with the town of LaCenter to lower their taxes because he thought it was egregious at that time, and they finally got them to understand. LaCenter chose to bring in their own auditor and audited his facilities when they were at a 15 percent gross tax. It took them 60 days to affirm the businesses wouldn't make it at that rate and they lowered the taxes to 10 percent. **Mr. Teeney** believed that if the Governor's bill should move forward, and this tax becomes law, that cities and counties should be allowed to consider a grandfathering clause for existing tax structures.

**Ron Sellar**, Hospitality Partners, (formerly Licensed Beverage Association), spoke for his own establishment, the Nineteenth Hole Restaurant and Lounge. Currently, he is licensed for \$500,000 in punch boards and pull-tabs. Kitsap County charges a three percent tax on the gross and he pays approximately \$3,000 to \$4,000 a quarter to the county, which adds up to almost \$16,000 a year. The 10 percent of tax on the gross, minus prizes paid out is within a fraction of the same thing, so it would literally double his tax. He will pay an additional \$16,000 to the state if the Governor gets his way. If that happens, he will still be profitable, but only marginally. He advised this is a tax he cannot pass on to the customer. He couldn't make it a 60-cent pull-tab instead of 50 cents because there's still a tax on it. He would probably have cut back some of his staff. Mr. Sellar said he would support almost any other tax that he could pass on to the consumer. As proposed, this is strictly out of the back pocket.

**Michael Transon**, Washington Restaurant Association, said they were not prepared to comment or discuss this issue today. He cautioned that his members indicate that a 10 percent tax like this will take a lot of them out of business because they are already so close to the margins. He advised that their governmental affairs committee has recommended to their board of directors to oppose any new taxes, surcharges, or fees to help balance the state budget.

**Representative Clements** said he didn't think a 10 percent gambling tax would survive the legislative process. He affirmed people will worry, and they should, and they should put together a full force of facts and figures to substantiate those things that they have been speaking about today. The best offense is the best defense in this case. He emphasized the Governor has a tough duty to do and they have their work to do.

**Vito Chiechi** addressed the \$2 million "attempted theft" and provided some historical perspective. He said this has been tried a number of times in the past. A couple of years ago, the Senate tried to take \$2 million out of the Commission fund, and many of those in the audience will remember that they fought that one down to the last wire, and they killed it. He believed this proposal would also reach that fate; however, he made an observation about the taxes. If the RGA's numbers are correct, and if 50-60 percent of the casinos go down, the Commission won't need to worry about the \$2 million. There won't be a Gambling Commission, because there won't be any funds to run it. He said that's scary because the Commission has done a marvelous job—it has done yeoman work in helping the gambling industry become the prime light throughout the nation for being one of the best controlled.

With no further testimony, **Chair Orr** recessed the meeting at 2:55 p.m. and recalled the meeting at 3:10 p.m.

## **2. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:**

**Commissioner Ludwig** made a motion seconded by **Commissioner Parker** to approve the new licenses, changes and tribal certifications listed on pages 1 through 22 of the agenda packet under License Approvals. *Vote taken; the motion carried with four aye votes.*

**Chair Orr** explained that he would like to change the order of the agenda so that the ex officio members who needed to leave early could hear the debate on Items 6 and 7 which had to do with tribal Compacts.

## **6. VOTE ON TRIBAL/STATE COMPACT:**

### **Muckleshoot Indian Tribe:**

**Chair Orr** announced that the debate between the parties would be limited to ten minutes total for each side of the issue.

**Director Day** announced staff would include Senator Prentice in the voting process via telephone conference call.

**Director Day** reminded the Commission that Washington State law requires that the two compacts about to be addressed, be negotiated by the Gambling Commission and the tribes. Once an agreement is reached, the Snoqualmie and the Muckleshoot Compact proposals are referred to the legislative committees and to the Commission. The legislative committees conducted a hearing on December 14, 2001, and have taken public comment. Now, the Commission must review the draft compacts, hold public hearings and then approve and forward the Compacts to the

Governor, or, if the Commission chooses, to return to the Compacts to the Director for further negotiations. If the Commission and the Governor approves and signs the compacts, they go to the Secretary of Interior for final approval and publication. **Director Day** stated that it is important to note that the two compacts deal with Class III gambling. The Muckleshoot Agreement is actually an amendment to an existing Compact and the Snoqualmie Compact is a new agreement. The Snoqualmie Agreement would be best described as the standard feature compact that has been provided for a number of casinos around the state. There are 24 compacts and 28 recognized tribes. He noted that in the Snoqualmie Agreement, the land the casino would be located on has not been formally approved. However, provisions in the Indian Gaming Regulatory Act (IGRA) specify that it would be located on the initial reservation of the Tribe. The Muckleshoot Agreement is an amendment and the most significant changes provide for an increase in hours, a second location, an increase in tables, and there are some clarifications of the negotiation procedures. Director Day referred to letters and e-mails, which were received in opposition of the Compacts. **Chair Orr** called for public comments.

**Kent Caputo**, Gaming Counsel for the Muckleshoot Tribe, introduced Chair John Daniels, Councilman Merle Barr, and Councilman Dennis Anderson. He noted the tribe had been working with the Commission and the Governor's Office staff for about 18 months on this negotiation process. He advised the Muckleshoot's have been operating since 1995, and this is an Amendment to the existing compact. Mr. Caputo thanked the Commission for a fair and open process and for the Commission's staff for working so diligently. **Commissioner Ludwig** questioned which land is being considered for the proposed additional casino. Mr. Caputo responded that the Tribe is starting with the basic legal approvals and would then decide if a second casino made sense from a market standpoint. He couldn't say with specificity that there is a particular plan to have a second facility, let alone where it would be. He affirmed that Commission staff worked diligently to make sure they were using the same IGRA-based definition of lands on or contiguous with the reservation Indian lands. **Commissioner Parker** asked whether there would a proposal to take land and put it into trust -- land that is not now in trust status that would have to be put into trust status? He explained that such a proposal would require concurrence of the local jurisdictions as well as approval by the Secretary of Interior. Mr. Caputo said there was no plan to seek post-1988 land under IGRA's definition that would require gubernatorial concurrence or any effort that way.

**Steve Griffiths**, on behalf of the RGA, congratulated the Muckleshoot Tribe for bringing forth the compact amendments. He pointed out that their organization is fully cognizant of the role the tribal casino plays in supporting tribal government and infrastructures on the reservation, as well as the service of their programs for their tribal members. The RGA is acutely aware because mini casinos or card rooms also pays taxes that support local jurisdictions and local infrastructures as well as support programs that support citizens in their local communities. He said the RGA certainly understands the need for the Muckleshoot Tribe to move ahead financially and they understand the need of the Muckleshoot Tribe to offer greater gaming amenities. They also understand the need of the Muckleshoot's to address the ever-increasing needs of their local citizens. Mr. Griffiths stated that it is the RGA's recommendation that the Commission give this their full consideration. In looking at future proposals from for-profit and from nonprofit organizations, Mr. Griffiths hoped those proposals would also be given the same due consideration.

**Representative Clements** noted concerns with regard to the Farmland for Preservation Act in King County and asked if the tribe's second casino location was a part of the issue and whether the Growth Management figured into the equation? **Ed Fleisher**, Deputy Director, clarified that he was not an expert on the land use issues, but staff did make it clear in the compact that the land needed to be on trust land, which means the title is held by United States Government, in trust for the benefit of the tribe. These are Federal lands; they are not state or privately held lands, and the issues around that are federal issues, not state issues. Generally, state and local laws on land use do not apply on the reservations lands. (Senator Winsley arrived at the meeting)

**Eric Durban**, CFO, Muckleshoot Casino, clarified that within the second facility; both the machines and tables would be leased from other tribes, so there would actually be a distribution of revenues. He thanked Mr. Griffiths for his kind words.

**Chair Orr** asked if there were any more comments in favor of the Muckleshoot Amendment. There were none.

**Director Day** noted that the Muckleshoot charity tables distributed in excess of \$700,000 in 2001, not including the two percent contribution. Chair Orr called for additional testimony, there was none.

## **7. VOTE ON TRIBAL/STATE COMPACT:**

### **Snoqualmie Tribe:**

**Frank Miller**, Gaming Counsel for the Snoqualmie Tribe, said they were clearly in favor of the Agreement. He provided some history about the tribe and introduced the Vice Chairman Maryanne Hinsman. Mr. Miller advised that for the last 40 years the tribe has worked to get their recognition back. In the fifties, they lost all their land and their recognition as a Federal tribe. In 1999, after a lot of fights and debates and tireless efforts, they finally received their recognition. As a part of that, they have now filed an application to have their initial reservation land created. That application is going through the Federal trust process initiated in 2001. This compact does not change much; they didn't ask for anything more than what other tribes received. Their desire is to get the compact done so when their land is put into trust, ultimately, they can start the process of building this government and to help their members. Mr. Miller affirmed that if there are delays, they also have the opportunity, based on other compacts, to use their machines elsewhere to gain revenue. He emphasized that it's important this compact be passed and go forward to the Governor's Office and to the Federal Government for approval.

**Maryanne Hinsman**, Vice Chair for the Snoqualmie Tribe explained that it has been a long and hard struggle for their tribe to receive recognition and she introduced the attending Council Members.

**Commissioner McLaughlin** asked if the tribe would be required to have the Secretary of the Interior and the Governor's approval before they could build a casino on any land? **Frank Miller** said they didn't necessarily need both approvals. There is an exception for any new land acquired after 1988 to be placed in trust, the Governor has an absolute right to say no. One of the exceptions is for initial reservation land for a tribe that was acknowledged in the Federal acknowledgement process. That is the process this tribe was acknowledged for in 1999, and they qualify under that exception. However, the Governor still has to approve the compact. Mr. Miller explained the land issue would still go back to the Federal Government. Ultimately, the Secretary of the Interior has to approve the compact as well, and they will also approve the land as trust land. One process is a gaming compact; the second process is getting the initial reservation qualified as their land in trust. However, in the event there is a delay, the tribe would then have the ability to lease some of their machines to other tribes in order to generate revenue.

**Ms. Hinsman** explained that with this compact, whether the casino opens rights away or whether they lease out their machines, it will bring revenue which will enable the tribe to start their senior housing, preschools and administration office. The revenue that would come from the casino would help them purchase back some of the lands they lost many years ago. It is very expensive, and the tribe simply wants to be able to provide for their people into the future generations. **Commissioner Parker** congratulated the tribe on regaining their recognition. He said it was a sign of progress, and the Commission will look forward to working with them. **Chair Orr** called for public testimony.

**Pat Anderson**, City Attorney for the City of Snoqualmie, noted the city was named after the tribe. He said he is not present to speak either pro or con because the city council hasn't taken a position one way or the other. He was present to confirm and understanding. The Snoqualmie Tribe has approached the city regarding the provision of police, fire, sewer, and water services. The mayor and city council have authorized them to enter into discussions with the tribe to attempt to reach some kind of an agreement and ultimately, the city council will approve that. Mr. Anderson asked to confirm, for the record, that the tribe has freedom to contract and buy services from the city. This agreement, if one is reached, would not be prohibited by, or inconsistent with, or controlled by the compact. The city understands the provisions of the Mitigation Impact Fund, but if there is a contract—and it's a separate issue whether it could be paid from the two percent fund—that would be something that the committee would decide. However, the two percent would not be controlling on a consensual contract that the tribe should enter with the city. Mr. Anderson noted the mayor supports the aspirations of the tribe.

**Chair Orr** suggested Mr. Anderson talk to Airway Heights with regard to the agreements between the city and the tribe. Mr. Anderson acknowledged some difficulties in being able to communicate with Airway Heights. **Mr. Fleisher** confirmed that the tribe is free to enter into an agreement with their city or the county to purchase services and that would be independent of the compact if they chose to do that. **Commissioner Ludwig** affirmed they were free to do so, but not required to do so. **Mr. Fleisher** affirmed. **Chair Orr** called for further comments.

**Jim Anderson**, Snoqualmie Valley resident, commended and congratulated the tribe on their recognition. His concern related to the location of the proposed casino because it is surrounded by three neighborhoods. He believed three

neighborhoods and a casino do not mix well because children would play in a road that would be adjacent to the casino. He also dreaded the thought of a disappointed patron who, having lost their money, would consume alcohol and take their frustrations out physically or on personal property. Mr. Anderson said they really don't have enough information right now to determine whether or not this is going to be detrimental to the surrounding community. However, he believed would be detrimental on an economic, social, or environmental basis. He cited a lack of information and suggested that someone needed to stand up and say, "we don't have enough information, let's stop and do the prudent thing." Another area that needed a more thorough investigation related to social costs. He questioned how the small business in the city would be impacted economically. Mr. Anderson hoped the Commission strongly consider not approving the compact and allow more time for investigation. **Commissioner Ludwig** responded to Mr. Anderson saying he didn't know how to investigate the future. However, one can investigate the past by talking to the communities where existing tribal casinos are located. One might find out that there's no adverse impact or that there is an economic advantage, or from a residential standpoint, it's no longer a desirable residential area. He suggested the best way to find out would be to check with the other 20 tribal casinos throughout the state.

**Representative Clements** said the testimony from the tribe is that they have a long way to go. One of the opportunities they have as a tribe is to sell some of their machine leasing rights until such time as their trust lands are approved. Representative Clements noted that he lives in a community where a casino has had a negative impact on the state's not-for-profit organizations. Although the Muckleshoot's give \$700,000 back to their community, the Yakama Tribe hasn't, and it's at a great disadvantage. While he appreciated Mr. Anderson comments, Representative Clements felt the beauty of Mr. Anderson's situation was that he has time to work with the tribe. He suggested the citizens take their concerns to the tribe and partner with them. **Mr. Anderson** affirmed his support for the tribe's efforts. The citizens think there's a place for the casino (someplace other than the current proposal); and they want to see the tribe become economically sustainable as a sovereign nation, but not at the cost of the social, economic and environmental issues that he had outlined.

**Commissioner McLaughlin** asked if this is the first compact the Commission has approved that does not have land in place. **Mr. Fleisher** responded that the Samish Tribe did not have land when their compact was approved. He noted there are approximately six or seven tribes who have entered compacts specifically and exclusively for the purpose of being able to sell their machine rights to other tribes.

**Ray Wilson**, Co-Chair for a committee of the Snoqualmie Valley Citizens for Positive Growth and Development, shared similar concerns. He emphasized the need for increased communication. He requested the Commission table this decision to initiate groundbreaking movement and legislation -- to incorporate communication, specific timelines and opportunities for all parties involved to meet and create a cohesive goal to best meet the community's needs. He agreed with Mr. Anderson regarding the need to look at the social, economic, and environmental impacts. He expressed concerns with regard to the area being clear-cut, the number of paved parking slots, the location being within two square miles of three public schools, and the traffic impact. He noted there has been a strong push on the revitalization of downtown Snoqualmie. Mr. Wilson strongly urged the Commission to review, refine and revise their thoughts and/or current policies. He indicated that there is a strategic planning conference planned this spring to look at the rules that a sovereign nation has and what policies they must adhere to, as well as the citizens. Mr. Wilson reiterated this is a group of concerned citizens who want to maintain and promote the vitality of the Snoqualmie Valley. They support the efforts of the Snoqualmie Tribe to gain economic stability. Putting a casino on the proposed spot would impact the future of the community in a negative way. Mr. Wilson strongly urged the Commission to make a decision based upon the future and a future process which would engage communication, engage goals, and engage objectives. He believed it was really important to look at the entire community and the impact this casino may have on all of them.

**Commissioner McLaughlin** noted that if the Commission tables this decision, the tribe would not be able to lease their machines. She suggested that the fact that Mr. Wilson, by virtue of making this plea, was putting the tribe on notice that they will have a community to deal with if they don't do it right.

**Commissioner Ludwig** said he perceived the town of Snoqualmie and surrounding area has a lot of business because of tourism. He recalled the Quinault Indian Nation's compact discussions and noted that the local chamber of commerce and the hotel and business people were overwhelming in their support for that compact because they thought it would enhance their tourism traffic, which may also occur for Snoqualmie. **Mr. Wilson** didn't disagree, however, he commented that they have a pretty rich area and they want to preserve the future for their children.

**Frank Miller** provided information on proposed meetings scheduled for January and February. He noted that in every compact, a difficult issue is placing a casino where there is sometimes a community. He noted the proposed facility would be located somewhere on the proposed 56 acres, which borders I-90. It's not in the incorporated part of the city. He acknowledged the tribe understands that there needs to be a lot of dialogue. However, to delay this project now, at this level, would cause real problems. Planning is going on, there are architectural plans being drawn, environmental assessments are being done, and they have to be approved at the Federal level. The tribe is hopeful this will happen within six months, but there is no guarantee. Mr. Miller believed a delay would not be in anyone's best interest, and the tribe would appreciate the Commission's vote today. (Senator Prentice was called telephonically and participated in the vote process.)

**Commissioner McLaughlin** made motion seconded by **Commissioner Ludwig** to accept the work and mission of the Muckleshoot Indian Tribe to amend their compact. *Vote taken; the motion passed unanimously.*

**Commissioner Ludwig** made a motion seconded by **Commissioner Orr** to approve the proposed Snoqualmie Indian Tribe. *Vote taken; the motion passed unanimously.*

**Commissioner McLaughlin** commented that she heard the two people who spoke against the Snoqualmie Compact and noted that it takes courage to speak against something you know that a number of people believe is the correct thing to do. She said she was pleased to vote for the Snoqualmie's Compact because the compact will allow the tribe to lease their machines and raise money for themselves and their endeavors.

**Representative Clements** hoped that the Snoqualmie Tribe followed through with their communications with the city. He noted the trust in any community, whether it is the Snoqualmie or the Muckleshoot, is based on a partnership and a handshake. He explained that is why he voted in support today, because he has had a change of heart. He has seen good tribes and good tribal representatives follow through with a commitment. On the other side, he's seen people that haven't, and that is a black eye for everyone in the gambling business in this state. Representative Clements advised that he has been very disappointed with his own tribe, in their activities, and their actions following their compact approval.

**Chair Orr** called for a recess at 4:25 p.m. and reconvened the meeting at 4:40 p.m. He redirected the agenda to Agenda Item No. 3.

### **3. GROUP IV QUALIFICATION REVIEW:**

#### **Seattle Jaycees, Seattle:**

**Monty Harmon**, Program Manager, Financial Investigations Unit, reported that this organization was formed in 1931. Their mission is to provide their members with leadership development and opportunities in management training through networking and community involvement. Licensed since 1975, the organization has 131 active members and is governed by a board of six officers who conducted 12 meetings in the last fiscal year. The organization provides leadership and management training programs to the members who range in age from 21 through 39. They also provide community services, including the creation of a scholarship program with the Seattle Community Colleges. For fiscal year ending December 31, 2000, the organization met its program services requirements and did not have excessive reserves. At present there are no pending administrative charges against the organization. Staff recommends that Seattle Jaycees be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

**Mr. Harmon** commented briefly on Attachment A, noting the organization suffered negative revenues as the result of an adjustment to their financial statements. This was generated by the accountant and related to losses in their investment accounts. They did have positive revenues from their gambling operations, and so this was a write-down due to the loss in the market. **Commissioner McLaughlin** asked how they went from \$7,644 to \$125,518? Mr. Harmon responded that he did not have specific analysis, and that the Bingo operation had suffered some decline due to the market situation. While their revenues have come down, their income actually boosted. They took some steps on saving costs, and their previous accountant made allocations and adjustments that they felt were not as reflective and accurate as the current expense allocations.

**Ernestine Farness**, Primary Bingo Manager, Seattle Jaycees, introduced various representatives from the organization. Ms. Farness addressed Commissioner McLaughlin's concern regarding the \$7,644 net return on Bingo. She affirmed the accountant inappropriately allocated the lease fees for their Bingo card minders to the Bingo payouts. Organizational staff worked with Commission staff to clarify the inaccurate reporting processes.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Seattle Jaycees as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. Vote taken; motion passed with four aye votes.

**4. GROUP V QUALIFICATION REVIEW:**

**Seattle Cascades Booster Club, Shoreline:**

**Monty Harmon**, Program Manager, Financial Investigations Unit, reported this organization is going through a name change. In the future they will come before the Commission as Cascade's Youth Music Association. The organization was formed in 1952. The mission of the Seattle Cascades Booster Club is to support, through drum and bugle activities, teaching youth lifelong skills such as hard work, discipline, commitment, sacrifice, practice. Licensed since 1975, the organization has 20 active members and is governed by a board of five members, including four officers who conducted 12 meetings during the last fiscal year. The organization provides financial and volunteer support to the Seattle Cascades Drum and Bugle Corps. Their programs include a field competition unit consisting of bugles, drums, and a color guard. For the fiscal year ending September 2000, the organization met its program and support services requirements and did not have excessive reserves. At present there are no pending charges against the organization.

Based on staff's analysis of the financial statements, narrative, and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. Seattle Cascades Booster Club is qualified as a bona fide charitable nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends Seattle Cascades Booster Club be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

**Commissioner McLaughlin** asked about the Bingo net income—\$25,000 against \$179,000 gain. **Shirley Wilcox**, Manager, responded that their accountant made some reporting changes that contributed to their net income going down. In 1999, their Bingo payout ran 80 percent and in the year 2000 it went down to 74 percent, which reduced taxes.

Commissioner Ludwig made a motion seconded by Commissioner Parker to approve Seattle Cascades Booster Club located in Shoreline as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. Vote taken; the motion passed with four aye votes.

**5. PHASE II REVIEW:**

**Hawk's Prairie Casino, Lacey:**

**Greg Thomas**, Program Manager, Northwest Region, reported this organization is a commercial restaurant, lounge, and house-banked card room located in the city of Lacey. The business is owned by SeaTac Casino LLC. The primary ownership consists of Charles McSwain, 27 percent; Donna Fors, 27 percent; Tryna Norberg, 27 percent, and the remaining 19 percent is divided among four other investors. SeaTac Casino LLC is not involved in any other house-banked card rooms in Washington and there are no management companies involved in Hawks Prairie Casino. The organization began conducting house-banked gaming on July 12, 2001. The card room operated 15 house-banked games, including 10 Blackjack, one Spanish 21, one Let It Ride, one Fortune Pai Gow, and two Three-Card Poker. Staff conducted a comprehensive investigation, including a review and observation of five key operating departments. The review team compared the licensee's actual operating procedures to those documented in the card room rules. The licensee's internal controls were compared to the card room rules to ensure compliance and consistency. A review was conducted of the organization's gaming and organizational records to ensure record-keeping compliance. During that review, no hidden ownership or unreported third party financing was detected. The new team found no material violations. The city of Lacey was contacted to verify the licensee is current on all gambling taxes. The Lacey Police Department was contacted to verify that there have been no adverse impacts of the card room on the community. Based on the results of the review, staff recommends approval to operate at Phase II wagering limits.

**Commissioner Ludwig** pointed out that the Commission has never seen a Phase II approval without violations, and they should be congratulated. **Mr. Thomas** introduced the General Manager, Mr. Christopher Butron, who also has a minority ownership interest. **Chair Orr** welcomed Mr. Butron.

**Mr. Butron** thanked the Chair and complemented agency staff. He noted that Special Agent Lisa Salia was very thorough and very helpful in assisting them through the process. He reminded the Commission that they were going to be in Olympia next month and encouraged them visit the premises. Mr. Butron also addressed the 10 percent tax issue, noting that if it should go through he will have second thoughts as to whether he can afford to give his employees medical insurance.

**Commissioner Ludwig** made a motion seconded by **Commissioner McLaughlin** to approve Hawk's Prairie Casino located in Lacey for Phase II wagering limits. *Vote taken; the motion passed with four aye votes.*

**8. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:**

**Chair Orr** called for comments from the public.

**Steve Michaels**, Michaels Development, LLC, commented on the compact-granting system. He said his company has worked with many other states in applying for compacts. He believed that the leasing of the machines creates a big loophole when applying for a compact. In other states you must show site plans, impact studies, economic plans, business structure, financing, and numerous other things that a normal business does. He noted that in Washington State, the Commission is not even looking at that information, and yet it is granting a compact. He believed the Commission needed to take a look at their compact-granting system. He suggested they go into a two-tiered system, one for leasing the equipment, and another one for actually operating a casino. Mr. Michaels said the Commission has granted at least one compact today under the notion that someone can run a business, but it hasn't seen anything presented to them on what they could do or where it's going to be. He believed the Commissioners were in essence inviting more tribes to come to Washington because of the simplicity of the system the Commission is using.

**Commissioner Parker** thought the difference between the system here and where Mr. Michaels may be referring to is that there is a two-tiered system in that the site decisions are not made by this Commission. While it is true they are incorporated in the proposal, the reality is that the Governor signs off on that aspect. Or, if it involves putting land into trust, the Secretary of the Interior signs off. This Commission is not making any kind of final decision on that; they are looking at whether or not there's an agreement on a compact. **Mr. Michaels** responded that his group must go through a lot to prove they are worthy. He believed the same structure should be followed when tribes present their petition for a compact. He noted tribes don't have to present to the Commission the rules that they are going to follow until after they've been given a compact. Commissioner Parker said there would be another difference if the site for the tribal casino was on tribal land, and if not within the boundary of the reservation, then immediately adjacent to the reservation. Within the boundary of the reservation, the tribe, in its other capacity as a tribal government functions to review site decisions. In non-tribal card room site situations, the local jurisdiction makes a rule whether or not there will be card rooms allowed. If they decide there can be, then anyone who can qualify for a license, may get a license. However, in the case of a tribal casino, the tribe in its governmental capacity reviews and makes a decision on site decisions.

**Commissioner Ludwig** referred back to Agenda Item 1(b) - Supplemental Budget, and said he would like some discussion on whether the Commission is rushing too fast to draft a letter overnight. He said he would defer to Mr. Fleisher. **Chair Orr** pointed out the letter would only be a draft. Chair Orr felt the Commission heard significantly from the audience that they were not in support of the \$2 million transfer. Chair Orr affirmed the Commission is quite concerned about how the Commissioners do the job entrusted to them and noted that he was comfortable drafting a response. He invited other comments. **Commissioner Ludwig** said that based on some of the comments today, he didn't want it to look like the Commission was throwing the gauntlet to the Governor. **Director Day** said he believed staff could accommodate the desired approach the Commission had in mind and staff would be prepared to present a draft for consideration on Friday. There were no further comments.

**9. EXECUTIVE SESSION TO DISCUSS PENDING INVESTIGATIONS, TRIBAL NEGOTIATIONS & LITIGATION:** Chair Orr called for an Executive Session at 5:10 p.m. and recalled the public meeting at 6:10 p.m. Chair Orr adjourned the meeting until 9:30 a.m., January 11, 2002.

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**COMMISSION MEETING  
FRIDAY, JANUARY 11, 2002  
DRAFT MINUTES**

**MEMBERS PRESENT:**

**COMMISSIONER GEORGE ORR, CHAIR;  
COMMISSIONER CURT LUDWIG, VICE CHAIR;  
COMMISSIONER LIZ McLAUGHLIN;  
COMMISSIONER ALAN PARKER;  
SENATOR SHIRLEY WINSLEY;  
SENATOR MARGARITA PRENTICE;  
REPRESENTATIVE ALEX WOOD;**

**OTHERS PRESENT:**

**RICK DAY, Director;  
ED FLEISHER, Deputy Director, Policy & Government Affairs;  
ROBERT BERG, Deputy Director, Operations;  
CALLY CASS-HEALY, Assistant Director, Field Operations;  
DERRY FRIES, Assistant Director, Licensing Operations;  
AMY PATJENS, Manager, Communications & Legal Dept.;  
JERRY ACKERMAN, Assistant Attorney General; and  
SHIRLEY CORBETT, Executive Assistant**

**Chair Orr** called the Gambling Commission meeting to order at 9:35 a.m. He noted discussion on Thursday relating to the Governor's the budget and read into the record a proposed letter of response to Governor Locke, as follows:

As members of the Gambling Commission, we are cognizant of the gravity of the financial situation facing the state the state of Washington; however, we must express our serious concern regarding your proposal to transfer \$2 million out of the Gambling Revolving Fund. As a non-appropriated and self-funded agency. We receive no monies from the general tax sources and must rely solely on fees collected from our licensees and from tribal governments. This funding structure places a responsibility on the Commission to carefully manage our fund balance so that we are always prepared to meet future regulatory needs and cash flow considerations.

Our concern over your proposal covers three main areas: 1) Reduction of our fund balance could seriously affect the agency's ability to carry out our primarily mission of regulating gambling and enforcing the criminal laws of gambling; 2) Use of our funds for general government purposes is contrary to the intent of our enabling legislation that the Gambling Commission be insulated from outside influence; and 3) Breaking the trust with our licensees and the tribes that our fees be related to the cost of service. Additionally, under the provision of Initiative 601, the Gambling Commission can never recover a one-time fund transfer out of these funds.

As you work with the Legislature on the Supplemental Budget, we request that you seek a solution that avoids any transfer of any of the monies from the gambling revolving funds and that you consider the legality under which the Gambling Commission functions.

**Chair Orr** said that he was sure staff would wordsmith the letter somewhat, but he wanted to demonstrate that, collectively, the Commissioners were all concerned about the issue. There was concurrence to send the correspondence to Governor Locke.

**11. MINUTES – November 14 and 15, 2001:**

**Commissioner Ludwig** made a motion seconded by **Commissioner McLaughlin** to approve the Regular Meeting Minutes of November 14 and 15, 2001 as presented. *Vote taken; the motion passed with four votes.*

**12. STAFF REPORT -FIREARMS REVIEW:**

**Deputy Director Robert Berg** said his report was based on a Commission directive that was issued at the Everett Commission meeting in August 2001. At that meeting, Commission staff was directed to prepare a comprehensive review of the agency firearms policies and present it to the Commission as soon as reasonably feasible. Among the matters to be addressed were the statutory basis, any relevant Commission rules, any written internal policies or unwritten policies or practices relating to firearms. For the last 10 years, a list of all incidents where a firearm was discharged in the line of duty, training excluded, where a firearm was drawn or displayed, any examples where an agency would have been intimidated, reluctant, or unwilling to perform his or her duties unless armed, a representative sample of the firearms policy in other comparable states, an estimate of the expense of original training and required follow-up, as well as any other policy considerations the Commission should have in mind in reviewing the current policy pertaining to the handling of firearms.

**Mr. Berg** clarified that RCW 9.46 establishes the Commission as a law enforcement agency. The definitions associated with the Gambling Commission are further defined in RCW 10.93.020, where the Commission is designated as a limited authority Washington law enforcement agency. He pointed out that there are several limited law enforcement agencies in the state of Washington, including the departments of Fish and Wildlife, Natural Resources, Corrections, the Liquor Control Board, and the Lottery and the Utilities and Transportation Commissions. RCW 43.101.010 further defines the Commission as a criminal justice agency. That is a definition within that statute which pertains to mandatory law enforcement training. As a criminal justice agency, the Commission is allowed to send special agents to the basic law enforcement academy, but is not required to do so. The requirement is attendant to general jurisdiction law enforcement agencies. The Commission has the authority as a limited law enforcement agency to arm its special agents and has chosen to do so. Agents have been armed since 1973 when the Commission was created. Restrictions in arming agents also are a matter of discretion left to the Commission. The current Commission policy does not provide authority for our agents to be armed while off duty nor can the firearm be carried off duty even with the benefit of a concealed weapons permit. We have agency-issued weapons and, therefore, their carry is restricted to times when the agent is on duty.

**Mr. Berg** said that in terms of Commission policies, he would not be discussing some of the significant dates that were shown in the presentation data, but he would talk about the agency's Use of Force Policy Manual. It was most recently updated in December of 2000. This policy applies to all commission employees with law enforcement authority. The Use of Force Policies and Procedures Manual is divided into two sections: The use of force policy and a procedures training and qualification section. The use of force policy covers purposes, definitions, use of force, rules of conduct, responsibility after use of force, reporting use of force, post shooting deadly actions, actions on scene, use of deadly force investigation, internal review, and unintentional discharge of firearms, and peer review. The procedure section of the manual deals with the issuance, handling, and safe use of firearms, firearms qualifications, firearms and range safety rules, and protective, safety, and defensive equipment, along with what the use of force training program entails on an annual basis, and use of force program records keeping. In December 2000, the policy was updated and reissued as reviewed and approved by Assistant Attorney General Jerry Ackerman. The policy was also reviewed by the Washington State Criminal Justice Training Commission. The agency has numerous written training guides, course of fire orientation, training records documents, along with agency acknowledgement signature sheets for universal range safety rules, range protocols and training course content. The agency has no unwritten policies relative to firearms training.

The other aspect discussed related to liability issues, and in the area of tort liability, staff discussed with Mr. Ackerman was the baseline from which a decision should be made with regard to arming of agents. **Mr. Berg** pointed out that the

agency should not arm special agents unless their duties and working environment indicate that such is necessary and appropriate. Since the agents are armed, a decision to continue to arm the Commission's special agents exposes the agency to liability, while the decision to disarm Commission's agents exposes the agency to a different liability. Staff then looked at gambling enforcement agencies from other states, and also surveyed the limited enforcement agencies within the state of Washington. He explained that they looked at 21 other agencies, 19 of them are considered general enforcement authority agencies. The State of Washington has a plethora of limited law enforcement agencies and that is not the case nationally. Most gambling enforcement is done by general authority peace officers, who by policy, are restricted as to what they enforce, and by statute, have the authority to enforce all criminal laws of the relevant state.

Of the 22 states surveyed, counting Washington, 19 are general enforcement agencies, two are limited enforcement agencies, including Washington State, and one considers itself to be a non-law enforcement agency— the state of North Dakota. It is operated out of the Attorney General's Office.

Staff then looked at the arming of those agents and of the 21 states using general enforcement or limited authority enforcement officers, all but one arms their agents. Only the state of Nebraska does not issue firearms to their special agents. **Mr. Berg** pointed out that in the state of Nebraska, the gambling enforcement is facilitated by the Department of Revenue. Insofar as limited law enforcement agencies in the state of Washington are concerned, the data revealed that all of the limited law enforcement agencies, with the exception of the Commission, Utilities and Transportation Commission and the Department of Social and Health Services, issue firearms to their enforcement officers. In addition to the general enforcement authority conferred on State Patrol troopers, the State Patrol recently, because of a Labor and Industries decision, armed their commercial vehicle enforcement officers and their trooper cadets. They are, by the Patrol's policy, limited enforcement officers. There is also the Liquor Board with their enforcement officers. The Parks and Recreation Commission made a decision two years ago to arm their rangers and Commission staff has actually been helping them develop some of their use of force training. The Department of Fish and Wildlife arms their enforcement officers and the Department of Natural Resources has a small unit. The only agency that arms their officers that does not send them to the basic law enforcement academies is the Corrections Department -- they have their own training because they are a large agency.

Staff looked at the firearms incidents for the agency. No employee of the Commission has ever discharged a weapon, other than in training, in the 28 years of the agency. Prior to 1995, the agency did not keep detailed records regarding the display of a firearm in performing duties. Staff surveyed the agency's special agents with longevity and found that on numerous occasions, firearms were displayed in service of search warrants, making custodial arrests, and other raids. While there have been incidents in the last 10 years where a firearm was displayed, or in the line of duty, there are no official agency records to document all of those incidents. Since 1995, the agency has required that special agents complete case reports detailing any application of force beyond mere escorting. The drawing of a weapon does not always equate to the display of that weapon or the application of force requiring such a report. Specifically, a special agent on a service of search warrant with perimeter security may remove the weapon from the holster, keeping it at the low ready, but there's no one around to observe it, and there's no one around to be intimidated. It's done for self-defense measures. In the past two years, there has been one display of firearms in conjunction with a felony arrest by special agents of the Commission. The display of those firearms and the use of those firearms in effecting the arrest was in accordance to their training and circumstances surrounding the arrest, and was in accordance with Commission policy.

In the 28 years of the history of the agency, there have been three unintentional discharges during training exercises. All of those were reviewed in accordance with agency policies and procedures. **Mr. Berg** affirmed ranges are dangerous places; which is why there are rules, and it is not uncommon, although rare, that unintentional discharges occur on the firing range. Special agents participate in two qualification shoots per year—one tactical shoot and one firearms advanced training systems shoot. He explained that is where a video is used, and the trainee makes a shoot/no shoot decision, which is then critiqued. He reiterated that there had only been three unintentional discharges in the history of the agency.

The Commission asked staff to look into examples where an agent would have been intimidated, reluctant or unwilling to perform his or her duties unless armed. Staff decided to approach this from three objective perspectives. The first was the job duties of the agent. Taken from the job description—what is it that we ask the agents to do? The second is, what is the environment in which they perform those duties? Finally, asking the agents themselves—what is it that you do and how do you feel about the work that you do in terms of being armed or not?

Special Agents conduct regulator compliance inspections; they undertake specialized investigations such as financial and undercover inspections leading to the revocation or suspension of gambling licenses, and filing of criminal charges. Agents investigate criminal complaints and issue citations and effect arrests with or without warrant. Agents interview witnesses, suspects and informants. Agents conduct onsite audits and Phase II Reviews. Agents serve search warrants and conduct property seizures and provide security at Commission meetings.

Staff thinks that the working environment for special agents is similar for the most part, to officers from the Liquor Control Board. That environment ranges from Bingo halls to fraternal organizations; from taverns to restaurants; from house-banked card rooms to tribal casinos. Staff reviewed law enforcement records from cities and counties where the top 30 house-banked card rooms (in terms of revenues) are located. They collected criminal activity data from those local law enforcement agencies; they analyzed a two-year period from September of 1999 through September of 2001. Because of some glitches in getting all the information, the average reporting period was 22.5 months out of that 24-month period. Staff found that there were almost 2,500 events where criminal calls for service had been reported to police. Seventy-five percent of those resulted in law enforcement taking enforcement action and approximately 850 of those reports dealt with crime against the person. Five of the card rooms reported the least calls for service—an average of 22.4, but the remaining 25 out of 30 had an average of 95 calls per establishment. They found 22 weapons offenses, 77 drug offenses, 8 armed robberies, 37 felony assaults, 178 misdemeanor assaults, 408 fighting/domestic disputes, drunken disorderly threats or disturbance events, and 10 cases of prostitution.

**Mr. Berg** explained this information does not include information from various drug vice task forces because of the time constraint in getting this information. Staff used the general authority law enforcement records databases. He added that with regard to task forces, the agency is currently involved in four separate task forces working with the FBI and local law enforcement agencies. He stated that generally they are located in the areas of King, Snohomish, and Pierce Counties and on the east side near Spokane. The agency worked with the FBI on two cases of public corruption involving city officials. They have worked on three cases involved with sports betting where wire taps were used, and are currently involved in two investigations with the FBI with regard to high-level bookmaking in the state of Washington.

The analysis does not include data from security. Staff contacted security for three different card rooms, but found their data incomplete. In the data collected, and in their review with security for the various card rooms, they discovered that a substantial amount of criminal activity in card rooms is not being reported to police, which is not unusual at all. Most of the activity not reported included fighting, drunken disorderly conduct, cheating, prostitution, and trespassing. Staff has found that most of house-banked card rooms that have gone into existing establishments have actually improved the safety and security of their customers because they have security and they have surveillance. When staff asks local law enforcement about the crime since the house-banked card room has opened -- they're looking to that period from the time it opened until we asked the question, and whether there has been a negative impact. That's why in 99.9 percent of the instances there is no adverse impact. The question staff does not ask, is what was it like before the house-banked card room? This question may lead to more interesting answers and poses another question for staff to ask. If this is the environment—and this is pretty much objective data from law enforcement records that's out there for house-banked card rooms—what are the other places we're sending our special agents like? There are 69 house-banked card rooms in the state, 15 tribal casinos, and 2,300 punch board/pull-tab licensees.

We also asked the special agents themselves, what is it that you do and what do you think about what it is that you do? They came back with statements such as high-risk duties included raids of illegal gambling operations, serving warrants, seizing assets and/or arrest of criminal suspects. Many of the licensed establishments are locations frequented not only by gamblers, but also by other persons involved in illegal activities such as drug trafficking, bookmaking and prostitution. The geographical location of some licensed establishments create an increased safety risk. Licensed establishments are known to carry large sums of money and some do not have adequate security. **Mr. Berg** defined “adequate” as being the kind of security one would find in a financial institution that has similar amounts of money available at the counter. Local law enforcement has more demand on their time, which limits their ability to assist Gambling Commission agents on gambling-related assignments. The agency's own inspection protocols require the times that agents are present at money counts and drops of funds as well as late-night inspections. Because agents interview criminal suspects, they're very concerned about routine situations and investigations that can turn hostile and dangerous. They assist local law enforcement with custodial arrests and service of search warrants, if they have a

common interest, and the public and licensees perceive agents as law enforcement.

**Mr. Berg** noted there are clear parallels between the objective job description set forth by the agency and the special agents' assessment of the job they do. He said it is also clear that the environment in which their agent's work is one where criminal activity does occur and some of the criminal activity is within the enforcement authority of the special agents. It is also a working environment where other agencies vested with limited or general jurisdiction authority conduct their duties while armed. He shared five incidents that occurred since the Commission's directive on August 2001. While these were at the high end of the force and threat continuum, it does represent, in a period of four months, there were five incidents in the environment in which the Commission's agents work.

The Commission also asked staff to look at training costs. Staff looked at this from three ways. New agent training, which is 40 hours of instruction and training, as follows: first aid defensive tactics, firearms, and the law enforcement authority of the agency's special agents. Of that, 28 hours is devoted to firearms. All agents are sent to the basic law enforcement academy— 720 hours total, of which 95 is devoted to firearms training. The final component of training is in-service training. The agents go through 40 hours of in-service training, of which 28 hours is devoted to firearms training and qualification.

Staff was also asked about costs. Costs are ascertained three ways. There's a cost when a new FTE is added. There's a cost when a new agent is hired because some of that equipment, such as the firearm and other things, is reissued. There are some things that the agency purchases for every new employee that is hired. There is the cost of in-service training, and that's divided into two costs—the direct cost, which pertains to the bullets, the targets, the objects used for training and the indirect costs, such as the prorated cost of the supervisors who run the range. They are special agents and they keep track of their time when they are involved in this program. There are also the salaries of the agent going through the training. The total agency cost to train a new agent is about \$2,800. The total agency cost to send an agent to the basic academy is about \$16,500, and the total cost to put one agent through their in-service program every year is about \$2,791.01. The total cost comes to about \$251,000, which is roughly 1.7 percent of the agency's budget.

Finally, the Commission asked staff to look at other relevant policy considerations. The first is the issue of ballistic vests and the second is the issue of use of force policy, and the part that the agency firearms training plays in that. The agency has a use of force policy, which is called a use of force wheel. In any situation the special agents finds him or herself, they are at the center of the wheel, and depending upon the threat presented, any one of the options would work. It's a dynamic process, and based on the level of threat, the agent chooses the level of response. **Mr. Berg** pointed out that if the arming of agents were removed, that would change the whole response mechanism and the training that they would have to undergo with regard to use of force. He read the policy statement of the agency's use of force manual.

The final issue related to concern about ballistic vests. The State Department of Labor and Industries, through WISHA, issues a regulation regarding each agency to conduct a credible assessment as to when protective body armor should be worn. The Washington State Patrol received a substantial fine because they had not conducted this assessment. Absent the assessment, the presumption was they should be wearing their vests. **Mr. Berg** pointed out that requirement is only applicable to general law enforcement agencies. As such, it does not apply to the Gambling Commission because we are a limited law enforcement agency. However, Gambling Commission staff contacted the Department of Labor and Industries to perform a credible assessment. The Commission's current policy is found to be appropriate. **Mr. Berg** read into record the current policy. This policy is substantially similar to most general law enforcement authority agencies in the state as it relates to non-uniformed personnel such as detectives, investigators, and command staff. Special agents of the Commission perform duties and dress in a manner consistent with that of investigators in law enforcement agencies.

**Mr. Berg** said he had asked Special Agent Lisa Salia to talk about the experiences of a special agent so the Commission could hear from a working special agent. Unfortunately, Ms. Salia was unable to be present, so he related some experiences that she had discussed with him. Ms. Salia has worked for the Commission for about five years having come from St. Martin's College where she graduated with a degree in accounting. She does not have a law enforcement background but believes agents should carry firearms for many of the reasons previously described. Ms. Salia is the manufacturing coordinator and is also a firearms instructor. She would tell the Commission that agents walk into situations that cannot be ascertained all the time in advance. She would tell the Commission that routine situations and investigations could suddenly turn volatile. She would tell the Commission that house-banked card rooms carry large amounts of cash and that agents work in remote areas. She would also tell the Commission that not everyone they deal

with as a licensee is a pillar of the community.

**Commissioner McLaughlin** questioned the agency's liability if an agent was involved in a shooting and not wearing their vest. **Mr. Berg** affirmed that police officers have been killed on duty where the department requirement was that they wear their vest, and they were not wearing their vest. The department in the city or county was sued for negligent supervision. The Commission has conducted the credible assessment as to when our agents should wear vests, and if our people follow the policy, that is evidence that you're doing things right. Obviously, if an agent should have been wearing a vest at the time and was not, and the policy says that they should have been wearing a vest, absolutely, the Commission would be exposed to liability. Agents are encouraged to wear their vest anytime they have an idea that they are going to be involved in an arrest or a raid. The only time they are not required to wear a vest is when they're walking around doing their job on a day-to-day basis. If they know they're going to effect an arrest, if they know they're going to participate in the service of search warrant, and if they know they're going to be involved in a situation where the agency will be conducting a raid, they must wear their vest.

**Mr. Berg** responded to questions regarding the weapon selected by the agency.

**Director Day** thanked Mr. Berg for the work and research that went into his report. He said this subject would always be controversial, no matter how you get into it, or when you get into it. In law enforcement agencies there are certain tools of the trade that are essential to the functions of that particular operation, and this engenders debate. The agency needs to make sure that it is clear that the intent of the report isn't to paint its licensees as a significant criminal enterprise. In discussions with Mr. Ackerman, the Commission's legal counsel, the agency must go through a step-by-step analysis, and make the best decision possible, and select the wisest course of action for the agency.

**Director Day** reviewed some important points for consideration: the Commission is a law enforcement agency with the authority to arm its agents. The Commission has a modern use of force policy that is about a year old. The policy is well designed and a lot of thought went into it. The agency and/or agents have a liability exposure; however, the worst liability exposure would be failure of the agency to properly equip and train its agents. The agency has roughly a 29-year history of arming its agents. This is not a new issue. The agency has an extensive training and continuing qualification program through a combination of state law enforcement academy and in-service training. It is a good program; the instructors are dedicated in their job; they conduct it professionally, and staff takes it seriously. He acknowledged Leonard Junk and his team of firearm training instructors for the excellent work they do on behalf of this Commission. It's a tough job and it is required that it be strict. The cost of training represents a small percentage of the agency's overall operating expenses. Out of 21 similar agencies that issue firearms to their enforcement officers, our agent duties, authority, and environments support the agency's decision to arm its agents.

**Director Day** believed the Commission should embrace its law enforcement status and reinforce its commitment to training at the state law enforcement academy. He believed the perception and practice of this agency as a Washington State enforcement agency actually enhances their efforts to gain voluntary compliance. In his opinion, law enforcement does not authorize or symbolize a reason to use excessive tactics. Instead, law enforcement establishes an ethical standard, a firm commitment to its mission, and to protect the public through the constitutional protections that everyone enjoys. Director Day believed the agency is extremely fortunate to have a combination of law enforcement and accounting staff -- it is a powerful and effective combination of investigative expertise and authority needed to get the job done.

**Director Day** emphasized the Commission's policy regarding firearms and law enforcement training is critical to its peer relationships with other law enforcement agencies in this state. He said in his experience, and probably in the experience of a lot of law enforcement people, they may never have to fire their weapon, but, "we can't be complacent just because things have been going well." Director Day believed the agency policy provides too much agent discretion regarding when to wear a firearm. It is not possible to predict when someone will find themselves in a defensive position on behalf of themselves or others. The firearm is an essential tool of the trade, and the controversy is oftentimes just eliminated. He believed the policy should say you need to wear it; you will not wear it by exception; you will wear it, and we will tell you when you won't wear it--we will tell you what the exceptions are, and that's final. Director Day advised that he would ask Mr. Berg to bring together a team of his firearms instructors to look at agency policy to make that small reversal—a required carry with specific exceptions. He noted there is a particular reason why the agency doesn't allow

off-duty carry; we are not general law enforcement so the 24-hour-a-day responsibility is not there. Director Day added that he would ask Mr. Berg to clarify and continue to formally seek the alternate weapon. This is important especially for agents that have a smaller physical stature. Director Day hoped the Commission would support his recommendation.

**Commissioner Parker** asked if there were a lot of agents who preferred not to carry the weapon when they are engaged in routine duties or just going to the office? **Mr. Berg** believed that a majority of the agents believe that they should be carrying their firearms more often than they are. However, there is a significant minority who disagree. He believes it comes down to how the administration historically has presented this--it has been a struggle for years, accepting the fact that the Commission is a law enforcement agency. Because of the lack of decisive decision-making from the top, it is possible this has caused the struggle. However, Mr. Berg affirmed that he would not be characterizing it correctly if he said that all of the agents felt they should be armed all of the time. It is a correct assessment to say that a majority of the agents feel they should be armed, more often than not, and many of them also believe that some direction from the administration is needed on this. He believed the agents are searching for more definitive guidelines. **Director Day** affirmed and added that everyone will not always be absolutely 100 percent in favor. He believed the agency needed a very firm and very clear policy decision, which is why he is asking that the firearms instructors get together to design the specific exceptions that are needed, and have a clear direction of what the intent is.

**Commissioner McLaughlin** noted that the training is expensive, and she asked how many agents moved to general-purpose agencies after the Commission had paid for the training. **Director Day** said he didn't have the precise number, but it does happen. There are agents who will hire on with the Commission; they will train with the Commission, and they leave if they get a better offer that is in their opinion a better career track. That is not uncommon with any enforcement agency. In many cases it has a lot to do with economic factors as well.

**Commissioner McLaughlin** said she may be making an assumption, but it was her observation that most Bingo players are more mature than those who do other forms of gambling. She asked why agents would have to wear a gun when they work in a Bingo hall. **Director Day** said that they were contemplating having agents wear their weapons unobtrusively all the time because not doing so may be more dangerous than having agents take their weapon on and off for different situations. The difficulties in the past has been having scattered interpretations of the policy. Director Day expressed his opinion that that is not the way to run the ship. The agency has a great training program and it should consolidate its policy and have a consistent, straightforward policy. He realized this is controversial -- it is an operational area -- but it needs to be done; it needs to be said; it's out in the open. Director Day expressed his hope the Commission would support staff in moving forward and settling these issues.

**Senator Winsley** noted that the Gambling Commission, the Liquor Control Board, the Department of Fish and Wildlife, the Department of Natural Resources, the Department of Corrections and Parks and Recreation Commission have all come before the Legislature declaring themselves to be law enforcement agencies -- and wanting into the LEOFF pension system for law enforcement officers. At least for the last six to ten years, the Legislature has denied them admittance to that program. The Legislature currently does not recognize these six agencies as law enforcement agencies and she believed it would take a change in statute to say that the Gambling Commission agents are "law enforcement agents." **Director Day** responded that the agency is always referred to as a law enforcement agency by statute. That is the titlement in statute. There is no question that over the 30-year history of this agency, it has acted as a law enforcement agency. The law calls the agency a law enforcement regulatory agency, which is why he believes the Commission and administrative staff needed to make this commitment. It will be very helpful to issues of policy, morale, and confidence.

**Commissioner Ludwig** affirmed we are here to discuss the firearm policy, and while retention and turnover are very important, and while what they're classified under statute or whether they are covered under PERS or LEOFF, doesn't really have any relevance to the firearm policy. Based on what he has heard today, he felt very comfortable with the direction the agency has been going in this area. He feels even more supportive of Director Day's recommendation regarding the firearm policy. He reminded the Commission that while there's a risk to taking action by requiring agents to carry their firearm, the risks of inaction are far, far greater. Commission Ludwig advised that he would support the Director's recommendation. **Commissioner Parker** expressed his support also. He felt the agency was on the right track, and if there was a motion, he wanted to go on record in support of the firearms policy as recommended.

**Commissioner McLaughlin** advised that she was the one that thought this issue ought to be limited, except an incident

occurred recently that changed her mind -- that was September 11th. Commissioner McLaughlin also expressed her support.

Commissioner Ludwig made a motion seconded by Commissioner Parker to formally adopt as policy, Director Day's firearms recommendation as presented. Vote taken; motion carried unanimously. **Director Day** said he appreciated the Commission's attention and that he clearly understands their concerns. He assured the Commissioners that staff would conduct their authority and responsibility appropriately.

**Chair Orr** called for a recess at 10:55 a.m. and reconvened the meeting at 11:10 a.m. (It was noted that Commissioner Parker would be absent for a short period of time.)

## **RULES UP FOR DISCUSSION**

### **13. BINGO:**

**WAC 230-20-244; WAC 230-20-246; and WAC 230-20-249:**

**Amy Patjens**, Manager, Communications & Legal, reported there were three Bingo rules up for discussion. They were filed after the last Commission meeting. Item 13(a) deals with electronic Bingo card daubers, which are allowed for Bingo, and have been since about 1994. By rule, the daubers can hold up to 66 Bingo cards. The changes make it clear that a Bingo player can only play one of the dauber machines plus as many disposable or hard cards as desired. Staff felt this should be clearer.

The next rule, Item 13(b), deals with how winning Bingo cards are verified. Currently, the winning cards must be verified by a Bingo employee and one neutral player. The proposed amendment allows an alternative method when a player has a winning card, but is using an electronic dauber machine. The amendment would allow a Bingo employee to verify the winner instead of using another player. However, after the Bingo employee verifies the winning card, the employee must still broadcast the winning card on a video screen for all players to see. This maintains the neutral player verification function.

The last rule deals with 3-number speed Bingo. This change was discussed as part of the Net Return Task Force, which concluded its work about a year ago. The rule change increases the maximum prize for a 3-number speed Bingo card from \$2 to \$7, and it makes it clear that these particular games can accrue a progressive jackpot. Staff recommends further discussion. There were no questions from the Commission or audience; the item will appear on the February agenda.

### **14. PULL-TABS:**

**WAC 230-30-033; WAC 230-30-045; and WAC 230-30-072:**

**Ms. Patjens** reported these rules were filed after the last Commission meeting. Item 14(a) deals with event pull-tabs. Event pull-tabs traditionally have been a small number of tickets in a set that usually sell out quickly. They are only allowed for charities, and the event drawing is usually related to the Bingo game. The nonprofit operators would like to have these types of tickets sold by floor workers, rather than requiring the player to go to the pull-tab area to purchase the tickets. If the licensee elects this method of sale, the rule requires that they keep detailed accounting records so the agency can keep track of the pull-tabs that were issued to each floor worker.

WAC 230-30-045 deals with carry-over jackpots when a licensee has closed or sold its business. This has occurred a few times and the agency has had questions about how to disperse the funds. The rule explains what the procedure would be. There are four ways to disperse the funds: they can transfer the jackpot to the new licensee—the buyer—assuming that person has a pull-tab license. They can award the jackpot to a player by playing the game out before they close their business. They can distribute the funds to the Washington State Council on Problem Gambling, or, they may distribute the funds to a bona fide charity licensed by the Commission.

WAC 230-30-072 deals with retention requirements. Currently, commercial pull-tab operators have to keep pull-tab games that have been played for at least two months after the game has been pulled. They must also keep the pull-tab

winners that are \$20 or above for 90 days. The rule requires that in addition to keeping these tabs themselves, the owner must keep the flare. Staff realized that we had not required this, and staff needed this for audit purposes, in order to actually match the winning pull-tabs with the flare. Staff recommends further discussion. There were no questions from commissioners or audience. This item will be scheduled for further discussion in February.

#### **15. PETITION FOR RULE CHANGE - TEACHING THE PUBLIC HOW O PLAY CRAPS:**

**Amy Patjens** reported this was filed after the last meeting. The petition was submitted by William Kirtland who owns a business in Tacoma called The Player's Edge, which is a store that sells gambling-related books, videos and accessories. Mr. Kirtland wanted to be able to teach the public how to play the game of Craps. No actual gambling would occur. There would be no cost to enter, no consideration or prizes paid. Mr. Patjens believed Mr. Kirtland does charge a fee for people to take the class, but it's not actual gambling. He had been in contact with staff regarding this rule for several months. Mr. Kirtland is requesting that a new section be added to the gambling service supplier definition to include providing educational and/or instructional classes or seminars pertaining to authorized gambling activities to the public.

Staff evaluated this rule and looked at the regulatory and policy implications for this type of change. Ms. Patjens noted that whether to allow this activity is a policy call.

One concern was allowing a non-business entity not tied to a specific location to possess this gambling equipment. Currently licensees can possess gambling equipment such as Blackjack tables, Roulette and Craps, but it's always tied to a specific location. Last month, staff thought they might need identification stamps on these machines, which is something that appears on amusement games and some other devices. Since then, staff has determined that they are not needed, but certainly if this is added as a type of business the agency would license, they would need to conduct some regulation (basically confirming the table really is at the one location). A policy consideration is that some might argue that the Commission is encouraging gambling by allowing this activity. Others would argue that you are actually just encouraging patrons who gamble to at least understand how the game is played. At the last meeting, former Commissioner Forrest asked whether some of our regulatory concerns could be addressed by simply adding language to the proposal. Staff has some suggested language in the event the Commission would ultimately decide to accept Mr. Kirtland's petition. That language suggests that the table remain at a permanent location designated by the licensee and that the classes be conducted at a permanent location designated by the licensee. There was nothing in the rule that would require that the table be only at one location. Staff sent Mr. Kirtland the proposed language. Staff recommends the new suggested language be filed today, and that the Commission vote to do so. If the Commission ultimately decides to approve the whole petition, the new suggested language would be included.

**Williams Kirtland**, owner of Player's Edge, acknowledged receipt of a letter that outlined staff's alternative proposal and affirmed that it was completely acceptable. He explained that the whole point of his petition was to have the opportunity to work with the Commission to create a situation where he could go forward with his business plan. Mr. Kirtland said he is a legitimate businessman with what he thinks is a legitimate idea. Most people who come to his classes are not familiar with what they're up against in a casino environment. He explained that most of the people that take his classes are preparing to go on vacation. He suggested a slight change in the language staff proposed. His petition asked to be able to use gambling devices that were deemed professional as instructional tools. Staff added, "the table must remain in a permanent location designated by the licensee, and the classes must be conducted at a permanent location designed." Mr. Kirtland advised that he has no problem with that intent, however he thought the term "the table" is weak. He suggested changing table to "all gambling devices." He advised that he teaches more than just Craps, he teaches Blackjack, and he would like to start teaching Roulette and Poker. The language "all gambling devices" encompass what this really is, not just a single table. **Chair Orr** suggested Mr. Kirtland work with Ms. Patjens. Mr. Kirtland affirmed.

**Commissioner Ludwig** commented the casinos don't need this rule to possess and use gambling devices for seminars and the real difference was Mr. Kirtland couldn't do it without this rule. **Mr. Kirtland** responded that he could conduct the seminars without the equipment, but, he is currently using makeshift equipment. Commissioner Ludwig said that sounded like gambling devices, whether he made it, or some manufacturer made it, it's the same thing, and Mr. Kirtland needed this rule to conduct the training with the present device he has.

**Mr. Kirtland** believed that at the last meeting, Ms. Patjens mentioned that he could conduct seminars even if the

Commission did not adopt this rule. However, he was concerned with the image of his business, and that having makeshift equipment as instructional tools presents something less than a professional and credible image.

**Chair Orr** called for a motion to file. **Ms. Patjens** noted that Mr. Kirtland's original petition was filed; staff is asking that staff's new suggested language be filed, it adds in some requirements that were not in Mr. Kirtland's petition.

**Commissioner Ludwig** noted there was a suggestion regarding whether to use the word "table" or "gambling device." He asked if staff wanted to work that language out before filing. **Ms. Patjens** said she was not as concerned about that part of the language, staff would work on the verbiage.

**Commissioner Ludwig** made a motion seconded by **Commissioner McLaughlin** to file staff's alternative proposal for further discussion. **Chair Orr** called for public comment.

**Steve Bennett**, Nisqually Red Wing Casino, noted that it states in the policy issues and considerations that only tribes, licensed fund raising events and gambling service suppliers may possess Craps tables. It clearly states that allowing situations like this would open the doors for card rooms and house-banked areas. In his opinion, it was issues like this that open up the doors for card rooms, nonprofit organizations and et cetera. Mr. Bennett noted that a lot of the compacts have been set in place for tribal entities. He was opposed to this rule because of the fact that the compacts were set in place for tribal entities.

**Gary Murray**, Vice President of the Recreational Gaming Association, said it is his organization's view that even though they don't have Craps at this point in time, whenever inexperienced gamblers walk up to a table, most of the players of the table appreciate someone with knowledge and appreciate that the person joining them isn't slowing the game down, isn't stopping action, and isn't hindering what is going on at the table. He emphasized that a well-educated player is always welcome in their establishments.

**Chair Orr** called for other comments. There were none. *Vote taken; the motion passed with three aye votes.*

#### **16. PETITION FOR RULE CHANGE - RAISING BETTING LIMITS FOR CARD GAMES:**

**Chair Orr** said he had been approached by the RGA, the author of the rule change/petition, who have asked to table the petition until March. Chair Orr invited public testimony in support or in opposition of the rule.

**Bob Tull**, attorney for the RGA, the petitioner, said Chair Orr accurately expressed his organization's request that this matter be set over. He said the Governor's proposed bill, among other things, addresses the question of betting limits. The RGA didn't want to undertake the effort of taking Commission and staff time and other public time while that is pending in the Legislature. He reiterated his understanding of the APA, and of the Commission's procedures, that if this were continued to March, or at least tabled, it could then be rescheduled perhaps in March. If relevant, and if necessary, in the event that the legislative session runs longer, then the RGA would work with staff to remove any timeframes. Their goal is to avoid any procedural difficulties and to minimize unnecessary work by their members, by staff, and by the Commission. Mr. Tull advised that the RGA concurs that if anyone today wants to be heard, they should be heard, but the RGA thinks it is appropriate to simply continue this, or table it, and to bring it forward perhaps in March.

**Commissioner Ludwig** made a motion seconded by **Commissioner McLaughlin** to table the Request for Petition - Raising Betting Limits for Card Games to a date certain at the Petitioner's request, or until there is an appropriate time to discuss the petition. *Vote taken; the motion passed with three aye votes.*

#### **17. Other Business/General Discussion/ Comments from the Public:**

**Chair Orr** called for comments. There was none.

#### **18. Adjournment:**

With no further business, **Chair Orr** adjourned the meeting at 11:35 a.m. and announced the next meeting would take place in Olympia on February 14 and 15, 2002.

Minutes submitted to the Commission for approval by:

Shirley Corbett  
Executive Assistant